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IN THE  
UNITED STATES SUPREME COURT  
OCTOBER TERM, 1983

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JEFFERY LEE GRIFFIN,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

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On Petition For Writ Of Certiorari  
To The Texas Court of Criminal Appeals

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER PETITIONER'S WRITTEN CONFESSIONS WERE  
ADMISSIBLE AS HAVING BEEN OBTAINED DURING  
CUSTODIAL INTERROGATION FOLLOWING AN EXPLICIT  
WAIVER OF PETITIONER'S FIFTH, SIXTH AND  
FOURTEENTH AMENDMENT RIGHT TO COUNSEL?

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES the State of Texas, Respondent herein, by and through its attorney, the Attorney General of Texas, and files this Brief in Opposition.

OPINION BELOW

The opinion of the Court of Criminal Appeals of Texas, which is not yet published, is reproduced in Appendix A to the Petition for Writ of Certiorari. The Texas Court of Criminal Appeals denied the Motion for Leave to File Petitioner's Motion for Rehearing without written order on September 21, 1983.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court under the provisions of 28 U.S.C. §1257(3).

### CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner bases his claims upon the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

### STATEMENT OF THE CASE

The record reflects that Petitioner was indicted on March 29, 1979, in Harris County, Texas, for the murder of David Sobotik, while in the course of attempting to commit robbery and while in the course of attempting to commit kidnapping. On October 22, 1979, an evidentiary hearing was held in the 183rd Judicial District Court of Harris County, Texas, on the voluntariness of Petitioner's confession. Trial began on October 23, 1979, and on October 31, 1979, the jury found Petitioner guilty of the offense of murder, while in the course of attempting to commit robbery. On November 5, 1979, after a punishment hearing, the jury answered affirmatively the special issues submitted pursuant to Article 37.071, Tex. Code Crim. Proc. Ann. (Vernon). Accordingly, punishment was assessed at death. Petitioner appealed his conviction and sentence to the Texas Court of Criminal Appeals, which on May 25, 1983, affirmed the conviction and sentence. Rehearing was denied on September 21, 1983.

### STATEMENT OF FACTS

The record reflects that officers from the Homicide Division of the Houston Police Department first interviewed Petitioner on March 13, 1979, at approximately 12:55 a.m., at the grocery store where the deceased was employed. Petitioner, described at this time as a key witness and not a suspect in the case, gave a voluntary statement to the police relating what he had allegedly seen on the night the offense occurred (SF 4011-29, 4030-42). Later that day, Petitioner, on his own accord, arrived at the Homicide Division of the Houston Police Department, where he gave a written statement corresponding to his earlier oral statements (SF 3542, 3546, 3588, 4272-73, 4327-42).

On that same date, Petitioner was asked if he would return to the Homicide Division to take a polygraph examination (SF 3543-46). Petitioner voluntarily returned on March 14, 1979, and the examination was administered at approximately 11:15 a.m. (SF 3546-47). After the results of the test were reviewed (SF 3548), Petitioner was placed under arrest and taken before a magistrate, where he was informed of his statutory and constitutional rights (SF 3548-52, 3502-07, 4276-77, 4309, 4346-53, 4359). He was returned to the Homicide Division around 1:35 p.m., taken to an interview room, and advised of his constitutional rights (SF 3552, 4277-81, 4360-61). He stated at this time that he desired to talk to the officers (SF 4281). When asked if he had an attorney, he replied that he could get an attorney, but that he did not want a lawyer (SF 3552, 3568-69, 4282). When asked if he wanted to make a telephone call, he declined (SF 3552). The officers then conversed with Petitioner about his background and previous statement (SF 3570).

At approximately 3:00 p.m., Petitioner indicated that he desired to talk to his lawyer (SF 3571, 3655, 4282, 4310, 4364), and informed the officers that Houston attorney Tom Jennings was his lawyer. The officers ceased questioning Petitioner, looked up the telephone number and dialed for Petitioner. Petitioner spoke to Mr. Jennings, in private, for about 10-15 minutes (SF 3571, 3655-56, 4282-83, 4364-65). A few minutes later, Petitioner received a call from Mr. Jennings, who declined to represent him (SF 3572-73, 3655-56, 4284, 4365-66). He advised the officers of Mr. Jennings' decision (SF 3573). The officers then asked Petitioner if he wanted another attorney. Petitioner stated that he did not (SF 3573, 3656, 4284, 4367). The officers explained to Petitioner his right to appointed counsel, to which Petitioner again responded that he did not want any attorney (SF 3573, 3656, 4384). Questioning then resumed.

At approximately 3:45 p.m., Detective Kent, the officer to whom Petitioner had given a witness statement on an unrelated

case in July of 1978, entered the interview room (SF 3574, 4285, 4367). Petitioner immediately recognized Detective Kent, responding in a friendly manner (SF 3445-46, 4368, 4422, 4473). After observing Petitioner and the other officers in the interview room for a short period of time (SF 3444-46, 4421), Detective Kent requested to speak to Petitioner alone (SF 3444-46, 3500-01, 3574, 4285, 4368, 4421). Petitioner responded that he wanted to speak to detective Kent alone (SF 4285). Once again Petitioner was informed of his constitutional rights, which Petitioner expressly waived (SF 3445-4425). Questioning ensued (SF 3451-52).

Petitioner subsequently confessed to the March 12, 1979 murders of David Sobotik and Horacio DeLeon, and the July 23, 1978 murder of Sylvia Mendoza. Prior to giving each written confession, Petitioner was again advised of his constitutional rights. Additionally, he subsequently led the police to the location of both murder weapons.

On October 22-23, 1979, a hearing was held in the state convicting court on Petitioner's "Motion for hearing on the voluntariness of Confession" (SF 3428-3691). The trial court entered written findings of fact based on the testimony presented and personal observations of the witness' demeanor that Petitioner made and signed his statements freely and voluntarily after being warned of his rights, and that Petitioner fully understood and knowingly and intelligently waived his constitutional rights (SF 3685).

#### SUMMARY OF ARGUMENT

There are no special or important reasons to review this case. The issue presented involves only the application of well-settled constitutional principles to the facts involved herein.

The court below correctly reviewed Petitioner's claims relating to the admissibility of his confession under the "totality of the circumstances" criterion established by this Court in Edwards v. Arizona. Petitioner has advanced no valid



reason to dispute the state court findings that Petitioner knowingly, freely and voluntarily waived his constitutional rights.

REASONS FOR DENYING THE WRIT

I.

THE QUESTIONS PRESENTED FOR REVIEW  
ARE UNWORTHY OF THIS COURT'S ATTENTION.

Rule 17 of the Rules of the Supreme Court provides that a review on writ of certiorari is not a matter of right but of judicial discretion, and will be granted only when there are special and important reasons therefor. Petitioner has advanced no special or important reason in this case and none exists.

II.

REVIEW SHOULD BE DENIED AS ONLY QUESTIONS  
OF EVIDENCE AND FACTUAL FINDINGS ARE INVOLVED.

The petition for writ of certiorari does not raise unsettled questions of law. The issue addressed involves nothing more than evidentiary questions and factual determinations made by the state trial and state appellate courts. The state courts below carefully considered Petitioner's claims of whether his written confessions and the evidence obtained as a result thereof were admissible as having been obtained in violation of the Fifth and Sixth Amendments, before rejecting them.

The question presented for review relative to Petitioner's claim that the confessions and resulting evidence were inadmissible as having been obtained during custodial interrogation which was continued after Petitioner had invoked his right to counsel does not present a substantial federal question worthy of this Court's review. This Court has consistently held that after being advised of his Miranda rights, an accused may validly waive his rights and respond to interrogation. Edwards v. Arizona, 451 U.S. 477, 484 (1981); North Carolina v. Butler, 441 U.S. 369, 372-76 (1979). Based on the testimony presented at the pre-trial hearing on Petitioner's Motion on Voluntariness of Confession and the court's

observations of the witness' demeanor, the state convicting court expressly found that Petitioner was warned of his constitutional rights and that he knowingly and voluntarily waived those rights.

Further, the criteria by which to determine the admissibility of confessions obtained as the result of custodial interrogation after the right to counsel has been invoked was established by this Court in Edwards v. Arizona, supra, and recently reaffirmed in Oregon v. Bradshaw, 103 S.Ct. 2830 (1983) and Wyrick v. Fields, 103 S.Ct. 394 (1982). The issue raised by Petitioner concerns only the application of Edwards and Oregon to a unique fact situation. This Court sits to decide important, novel or recurring questions, not to review questions founded on settled principles of law. This case does not present any substantial federal question worthy of this Court's review.

### III.

THE COURT BELOW CORRECTLY DISTINGUISHED  
PETITIONER'S CASE FROM THIS COURT'S HOLDINGS  
IN EDWARDS V. ARIZONA, 451 U.S. 477 (1982)  
AND OREGON V. BRADSHAW, 103 S.Ct. 2830 (1983).

In Edwards v. Arizona, the accused requested that he be appointed an attorney before entering in any negotiations with the police officers and county attorney. Questioning ceased and the accused was taken to the county jail. The following day, two officers arrived at the jail and requested to speak to the accused, who specifically informed the detention guard that he did not wish to talk to anyone. The guard told the accused that "he had" to talk. Custodial interrogation then ensued and the accused ultimately made a confession. 451 U.S. at 478-79.

Similarly, in Oregon v. Bradshaw, during the custodial interrogation the accused specifically requested an attorney before the interrogation went any further. The conversation was immediately terminated. Later, while the accused was en route to the county jail, he inquired as to what was going to happen to him. A discussion ensued, during which the accused agreed to take a polygraph examination. A confession was subsequently obtained. 103 S.Ct. at 2832-34.

The facts of Petitioner's case are significantly different from Edwards and Bradshaw. The record reflects that after Petitioner had been advised of his constitutional rights and prior to questioning, Petitioner informed the officers that he could get a lawyer. When advised that he had a right to court appointed counsel if he could not afford to retain one, Petitioner responded that he had a lawyer, but did not want one (SF 3552, 3568-69, 4282). After questioning Petitioner for about an hour and a half about his background and previous statement, Petitioner informed the officers that he would like to call his lawyer and gave the name of Houston attorney Tom Jennings. The interrogation terminated and Mr. Jennings was contacted. Petitioner spoke to Mr. Jennings, in private, for 10-15 minutes. Within a few minutes after the conversation, Mr. Jennings called, spoke to Petitioner for 2-3 minutes, and declined to represent him (SF 3571-73, 3655-56, 4282-83, 4310, 4364-66). Upon informing the officers of this fact, Petitioner was asked if he wanted to call another attorney. He stated that he did not (SF 3573, 3656, 4284, 4367). The officers again explained to Petitioner his right to appointed counsel, to which he responded that he did not want any attorney (SF 3573, 3656, 4284). At this point questioning resumed.

Unlike Edwards or Bradshaw, Petitioner expressly countermanded his election to have counsel present during custodial interrogation immediately following Mr. Jennings' refusal to represent him. Further, his express waiver was made after he informed the officers of Mr. Jennings' decision and in direct response to their inquiries as to whether he desired to contact another attorney or wanted counsel appointed. The court below noted additional distinctions:

[Petitioner] did not make a general request for counsel, as Edwards did. [Petitioner] did not say he did not want to talk to the officers, as Edwards did. [Petitioner] did not say he wanted to deal with the police only through counsel, as Edwards did. [Petitioner's] request to consult with his attorney was promptly and fully honored, as

Edwards' was not. [Petitioner] was even asked by the officers if he wanted to talk to another lawyer after his previous lawyer declined representation, and [Petitioner] explicitly stated he did not want to talk to any lawyer at that time, expressly declining to exercise the right he now asserts was denied him. We find Edwards v. Arizona, supra, is clearly distinguishable and overrule these grounds of error.

Griffin v. State, slip opinion at 13.

Edwards held that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by merely showing that the accused responded to further police initiated custodial interrogation. 451 U.S. at 484-85. The court emphasized that in establishing a waiver of an accused's constitutional right to counsel, the "totality of the circumstances", including the fact that the suspect initiated the questioning, controls. See Wyrick v. Fields, 103 S.Ct. 394, 397 (1982). In Bradshaw, the principles of Edwards were reaffirmed, with the Court expressly recognizing that the "initiation" of a conversation does not automatically amount to a waiver of a previously invoked right to counsel and reiterating the well-settled principles that the establishment of a waiver depends upon the totality of the circumstances. 103 S.Ct. at 2834-35. The court below carefully reviewed Petitioner's claims under the "totality of the circumstances" criterion established in Edwards, before rejecting them.

Prior to overruling Petitioner's motion on the voluntariness of the confession, a hearing was held in the state convicting court. The court made written findings based on the evidence presented, observation of the demeanor of the witness, and considering all the facts and chain of events occurring. The court found that Petitioner fully understood his constitutional, statutory and legal rights and knowingly and intelligently waived them, and that he made and signed his statements freely and voluntarily after being advised of his rights. Petitioner has

advanced no valid reason to dispute the state court's findings,  
and none exists. Oregon v. Bradshaw, 103 S.Ct. at 2835.

CONCLUSION

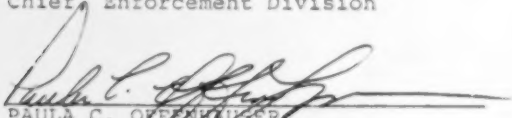
For these reasons, Respondent respectfully requests that the  
petition for writ of certiorari be denied.

Respectfully submitted,

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